



Appeal Decision

Site visit made on 22 June 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2023

Appeal Ref: APP/W1525/W/22/3311032

Trent Road Streetworks, Melbourne, Chelmsford CM1 2JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CK Hutchison Networks (UK) Ltd against the decision of Chelmsford City Council.
 - The application Ref 22/01592/TEL56, dated 20 August 2022, was refused by notice dated 18 October 2022.
 - The development proposed is 15.0m Phase 9 slimline Monopole and associated ancillary works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require Local Planning Authorities to assess the proposed development solely based on its siting and appearance, taking into account any representations received. My determination of this appeal is made on the same basis.

Planning Policy

3. Part 16 of the GPDO establishes that the proposal is permitted development, and so is accepted in principle by virtue of the legislation. There is no requirement to have regard to the development plan as there would be for any development requiring express planning permission. However, I have had regard to policies of the Chelmsford Local Plan (2020) (the CLP) as cited in the Council's decision notice, as well as the National Planning Policy Framework (2021) (the Framework), as material considerations.

Main Issues

4. The main issues are:
 - the effect of the siting and appearance of the proposed development upon highway safety;

- the effect of the siting and appearance of the proposed development upon the security of Lawford Meadow Primary School and Nursery; and,
- if any harm would occur, whether that would be outweighed by the need for the development to be sited as proposed taking into account any suitable alternatives.

Reasons

Highway safety

5. The appeal site is on an approximately 3.3m wide section of footway outside Lawford Meadow Primary School and Nursery (the school) adjacent to the perimeter fence in close proximity to a bus stop. There are occasional small tree pits, streetlamps, and a bus stop on the outer side of the footway which reduce the available space at certain points.
6. In the immediate vicinity on Trent Road are houses, apartment blocks, a shopping parade, as well as the school campus. As a distributor route with such services and facilities as well as public transport connections and nearby religious and community facilities, Trent Road is subject to periods of heavy footfall, particularly at school opening and leaving times. At my visit at school opening time the route and particularly the southern footway was very busy with parents and young children traveling to and from the school campus entrance. There is nothing to suggest this is untypical at this time of day.
7. Children were in pushchairs or walking hand in hand with parents, others in small groups, with many walking abreast, and other pedestrians walking in the opposite direction having dropped off children. The footway was frequently occupied for much of its width with yielding required, particularly on the inner side adjacent to the school fence where parents sought to keep young children away from the outer footway where there are no safety railings.
8. There were pinch points at the bus stop where those waiting for a bus queued and bus users alighted, and as car doors opened east of the bus stop, onto the outer footway by the appeal site, with some degree of conflict between users. I am also informed that at other times the bus stop is used by the school for buses for educational visits and activities, during which there would be large numbers on this part of the footway around the appeal site.
9. The mast would project approximately 0.7m from the inner side of the footway, providing a significant barrier, and significantly reducing its available width. Given the nature and volume of pedestrian traffic it would be a significant impediment, preventing the use of the inner footway, away from vehicles driving or with doors opening. It would result in considerably greater conflicts between highway users around the mast, with the potential for some to have to step into the carriageway. Given the usage patterns I saw, and the evidence before me, it would result in significant harm to highway safety.
10. The harm from the mast would be exacerbated by the new cabinets given two would project a greater degree into the footway, and they would occupy a significant footway length east of the mast. While they might benefit from permitted development rights not requiring prior approval under the GPDO, it is not put to me they would be installed, were the mast not to be permitted.

11. There is no objection from the Highway Authority due the remaining footway being an effective width of approximately 2.4m, above the 2m width highway standard. However, despite this, it is clear, based upon the evidence before me and what I saw, the proposed new mast in this specific location, and exacerbated by the cabinets would be significantly prejudicial to highway safety in a busy location used by several vulnerable highway users. Conditions could not mitigate the harm.
12. For the reasons set out above, the siting and appearance of the monopole would be significantly harmful to highway safety. While not determinative in a prior approval appeal, it would conflict with Policy DM23 of the CLP, which expects development to be of a high quality, compatible with its surrounds having regard to its siting, and create safe accessible and inclusive environments. It would also conflict with paragraphs 111 and 112 (c) of the Framework which state that development should be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety and applications should create places that are safe and minimise the scope for conflicts between pedestrian, cyclists, and vehicles.

Security

13. The cabinets would have a height ranging between approximately 1.1m to 1.7m, located directly adjacent to the approximately 1.6m – 1.8m high school campus perimeter fence. Their installation and the arrangement would provide a relatively straight forward access from their top over the fence into the campus grounds. This would therefore result in significantly increased security concerns and a privacy risk to children and staff at the school. I do not share the appellant's view, and it has not been demonstrated, how easier access to CCTV, communication or the emergency services would mitigate the significantly increased security risks to the school from the cabinets.
14. While they might benefit from permitted development rights not requiring prior approval, it is not put to me that the cabinets would be installed if the monopole was not to be erected. Were the appeal monopole to be erected, its siting would result in significantly increased security concerns and privacy risks to the school campus and its users.
15. In consequence, the proposed development would be detrimental to, and have harmful effects upon security at Lawford Meadow Primary School and Nursery. While not determinative in respect of a proposal for prior approval, it would conflict with Policy DM29 of the CLP, which expects development to be compatible with existing uses in its vicinity.

Alternative sites

16. The expansion of electronic communications networks, including 5G mobile technology, is supported in the Framework. There is no disagreement there is a need for a mast as part of the appellant's roll-out and increase of its 5G network. This equipment is required to provide improved 5G coverage and capacity in the area due to acute capacity issues. The evidence suggests the height and design are the minimum capable of providing the required coverage and functionality.
17. The appellant outlines sequential approaches to site selection within the designated search area. They include having regard upgrading an operator's

own existing base station, the scope for mast or site sharing, co-location along existing telecommunications development, installation on an existing building or structure, and investigating sites for ground-based installations. It is of the view that options are limited and the proposal advanced is the only viable one. However, the appellant's evidence in this regard is very brief and it does not fully explain how this approach and the discounting of options a) – c), or 1 – 4, has been applied to the search area.

18. Eight other locations are discounted. The information submitted concerning the assessment of these is also very brief and the precise technical parameters applied, not clear. The appellant discounts them due to amongst other things, absence of screening, insufficient space or pavement width, trees and overhead cables. I viewed the locations at my visit. However, I can only clearly see why D2, D3 and D8 were discounted. Around D1 and D3 – D7 the highway incorporates sizeable clear verges and green spaces, so it is not clear why such apparatus could not be accommodated in the areas for the reasons set out.
19. A pre-application consultation was undertaken. However, I am informed this was only around 6 days before the application was submitted. The authority responded explaining its concerns soon afterwards. It is not clear how the appellant sought to actively address the points raised or subsequently discussed matters with the Council, so this attracts little weight.
20. I acknowledge that options for siting the development are limited by technical and operational constraints. However, based upon the evidence before me I am not satisfied that installing a harmful mast at the appeal site represents the only feasible means by which the appellant could provide the necessary 5G coverage and capacity in this area, and, that other more suitable alternative sites may not be reasonably available.

Other Matters

21. Paragraph 114 of the Framework explains that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Decisions should support the expansion of communications networks, including next generation mobile technology (such as 5G). Improving connectivity and digital inclusion would have economic, social, health, educational, well-being, and sustainability benefits. However, these have not been taken into account in considering matters of siting and appearance.
22. Paragraph 118 of the NPPF states that applications must be determined on planning grounds only. The application is accompanied by a Declaration of Conformity with ICNIRP Public Exposure Guidelines, so it complies with the necessary health safeguards. The Council does not appear to object to the effect of the siting and appearance upon the character and appearance of the area, and based upon the evidence before me, I see no reason to disagree.
23. The Council¹ and appellant² have provided copies of appeal decision letters which they consider support their cases. I am not provided with the detailed circumstances, plans and submitted evidence in respect of those particular cases. However, in the examples provided, none appear to be on a section of footway adjacent to a busy school and nursey campus and close to a bus stop.

¹ APP/W1525/W/21/3281020 and APP/W1525/W/22/3302901.

² APP/A5480/W/20/3254830 and APP/G4240/W/20/3263529.

Therefore, they are not directly comparable to the circumstances of the appeal proposal, which I have assessed based upon the evidence before me in relation to its specific location, circumstances, and on its own merits and impacts.

Planning Balance & Conclusion

24. The siting and appearance of the monopole would be significantly harmful to highway safety, which would be exacerbated by the cabinets, that would also be prejudicial to security at Lawford Meadow Primary School and Nursery. While options for siting the monopole are limited by technical and operational constraints, the evidence does not demonstrate that there are no alternative suitable sites or solutions available which would be less harmful than the siting of this monopole.
25. Therefore, for the reasons set above, notwithstanding the need for the monopole in the area, this is outweighed by the harm to highway safety from its siting as proposed. In consequence, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR